

February 8, 2024

Senator Donna Bailey  
Representative Anne Perry  
Joint Standing Committee on Health Coverage, Insurance and Financial Services

**RE: Letter in Opposition to LD #2126 An Act Relating to Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses**

On behalf of more than 4,000 registered nurses and health care professionals providing patient care in our state, the Maine State Nurses Association/National Nurses Organizing Committee/National Nurses United (MSNA) urges the Committee to reject LD # 2126, An Act Relating to Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel. LD 2126 would alter the definition of “professional nursing” in an apparent attempt to undermine the role of the registered professional nurse (RN). LD 2126 could force RNs to delegate patient care to unlicensed personnel whether or not the RN deems it safe.

MSNA respects the contributions of all healthcare personnel who assist nurses in the delivery of safe, competent, and therapeutic care. The education—if any—and training provided to unlicensed assistive personnel equips them to assist and support RNs, not to care for patients without close oversight by an RN. There are many dangers to this practice and the legislature must take every precaution to safeguard against it.

After careful analysis, it is our view that this bill permits changes to registered professional nursing practice that are inconsistent with prevailing standards of safe patient care and could undermine the role of RNs in their obligation to protect the life and health of patients in their care.

***LD 2126 is unnecessary because the Maine State Board of Nursing (BON) has already created rules for RNs to coordinate and oversee unlicensed assistive personnel.***

The BON has already created rules and guidance for RNs to safely coordinate and oversee the work of unlicensed assistive personnel.<sup>1</sup> They allow RNs to determine tasks that can be performed by unlicensed assistive personnel, provide direction, and monitor the performance of the task. The RN must consider whether such coordination is consistent with patient safety given factors relating to the patient, the setting, and the capability of the personnel. These existing regulations are consistent with national standards of care.

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<sup>1</sup> 02-380 Maine State Board of Nursing Chapter 6 Regulations Relating to Coordination and Oversight Of Patient Care Services by Unlicensed Health Care Assistive Personnel, <https://www.maine.gov/boardofnursing/docs/Chapter%206.pdf>.

***LD 2126 opens the door to forcing RNs to delegate to unlicensed personnel beyond what is safe for patients.***

LD 2126 appears designed to transfer patient care out of the hands of RNs—who receive years of education, pass a licensure exam, and must maintain licensure with the BON—to unlicensed personnel who have no particular legally-mandated qualification to provide health care.

First, LD 2126 removes “coordination and oversight of patient care services” and replaces it with the word “delegation of specific nursing activities and tasks”. Oversight and coordination are not synonymous with delegation. Delegation is the act of transferring the authority to perform a selected nursing task to a competent individual, while a registered nurse takes responsibility and accountability for this care.<sup>2</sup> Unlicensed personnel, a category that explicitly excludes licensed practical nurses and certified nursing assistants in this bill, may be appropriate to provide services to patients such as help with activities of daily living, but they are not qualified to provide nursing services. The existing language is more appropriate for the role unlicensed personnel can safely fill.

Second, LD 2126 strikes language that explicitly states the provision does not “prohibit[] a nurse in the exercise of professional judgment from refusing to provide such coordination and oversight in any care setting.” RNs are legally responsible for deciding when it is safe to delegate patient care tasks based on multiple factors.<sup>3</sup> Delegation is a skill requiring clinical judgment and final accountability for patient care. Nursing care is delivered in patient homes, schools, hospitals, long-term care facilities, and other settings. In any care setting, a wide range of situations can affect an RN’s determination of the appropriateness of delegation on any given day. Moreover, “unlicensed assistive personnel” is a broad category including workers with a wide range of training and experience that affects what tasks a given worker can perform safely.

Even if LD 2126 removes the clarifying language in this paragraph, the obligation for RNs to exercise these judgments to protect the life and health of patients remains. This would create a situation where RNs are accountable for all delegation decisions but risk being deemed insubordinate by employers if they refuse to carry out directives that they have determined to be a risk to the patient. Protecting professional judgment in delegation is increasingly important as the health care industry lobbies for models of care that reduce the access to skilled professional registered nursing care regardless of the impact on patient safety.

Thirdly, LD 2126 replaces a neutral requirement for the BON to adopt rules for the application of the paragraph to nursing practice with a requirement that the BON adopt “rules concerning delegation as it considers necessary to ensure access to quality health care for the patient.” Ensuring access to quality health care is simply beyond what the BON can do with delegation

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<sup>2</sup> National Council of State Boards of Nursing and American Nurses Association. (2019). *National Guidelines for Nursing Delegation*. Retrieved from [https://www.ncsbn.org/public-files/NGND-PosPaper\\_06.pdf](https://www.ncsbn.org/public-files/NGND-PosPaper_06.pdf)

<sup>3</sup> Sharma, J. M. B., & Sandeep. (2023). Five Rights of Nursing Delegation [Updated 2023 Jul 24]. In StatPearls [Internet] (2024 ed.). Treasure Island (FL): StatPearls Publishing. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK519519/>

rules. Transferring nursing services away from RNs to unlicensed personnel endangers patients and may lead to adverse outcomes requiring a higher level of medical care or even death. It is the opposite of ensuring access to quality health care for the patient.

Finally, LD 2126 would inappropriately classify the BON's rules for the application of the paragraph as minor technical rules instead of major substantive rules. Under Maine law, a rule is a major substantive rule if it will "[r]equire the exercise of significant agency discretion or interpretation in drafting."<sup>4</sup> Determining what delegation rules to unlicensed personnel are necessary to ensure access to quality health care requires substantial agency discretion and interpretation, particularly given how vague the statute is about what change it intends to spur in BON rules. Shifting patient care from RNs to laypeople has a substantial impact on patient safety and any move to do so should not be couched as a minor technical rule.

We strongly urge you to reject LD 2126.

Sincerely,

A handwritten signature in cursive script that reads "Coralie Giles RN".

Coralie Giles, RN  
President, Maine State Nurses Association  
Vice-President, National Nurses United

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<sup>4</sup> 5 MRSA §8071